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Introduction and first reading: 09/08/2009
Public hearing: 09/12/2009
Second reading and enactment: 09/12/2009

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the owner of the property located at 3500 Goddard Way to construct and maintain an encroachment for a portion of a stone retaining wall at that location.

Summary

The proposed ordinance permits the owner of the property located at 3500 Goddard Way to construct and maintain an encroachment for a portion of a stone retaining wall in the public sidewalk right-of-way at that location.

Sponsor

Staff

Faroll Hamer, Director, Planning & Zoning
James L. Banks, Jr., City Attorney
Jill A. Schaub, Senior Assistant City Attorney

Authority

§2.04(e), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE authorizing the owner of the property located at 3500 Goddard Way to construct and maintain an encroachment for a portion of a stone retaining wall at that location.

WHEREAS, Duke Crossing, Inc., is the Owner ("Owner") of the property located at 3500 Goddard Way, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a portion of a stone retaining wall which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 3500 Goddard Way, in the City of Alexandria, said encroachment consisting of a portion of a stone retaining wall along the Duke Street frontage of the Quaker Ridge development extending approximately 4 inches into the public right-of-way for a length of approximately 65 feet, as generally shown on the plat attached hereto, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owner of liability for any negligence on its part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owner maintaining, at all times and at its own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury: \$1,000,000 each occurrence
\$1,000,000 aggregate

Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate

1 This liability insurance policy shall identify the City of Alexandria and Owner as named insureds
2 and shall provide for the indemnification of the City of Alexandria and Owner against any and
3 all loss occasioned by the establishment, construction, placement, existence, use or maintenance
4 of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city
5 attorney's office. Any other provision herein to the contrary notwithstanding, in the event this
6 policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and
7 effect, the authorization herein granted to establish and maintain the encroachment shall, at the
8 option of the city, forthwith and without notice or demand by the city, terminate. In that event,
9 Owner shall, upon notice from the city, remove the encroachment from the public right-of-way,
10 or the city, at its option, may remove the encroachment at the expense and risk of Owner.
11 Nothing in this section shall relieve Owner of its obligations and undertakings required under
12 this ordinance.

13
14 Section 3. That the authorization hereby granted to establish and maintain said
15 encroachment shall in addition be subject to and conditioned upon the following terms:

- 16
17 (a) Neither the City of Alexandria nor any public or private utility company shall be
18 responsible for damage to Owner's property encroaching into the public right-of-way
19 during repair, maintenance or replacement of the public right-of-way of any public
20 facilities or utilities in the area of encroachment.
21
22 (b) Owner shall be responsible for replacement and repairs to the adjacent City right-of-
23 way, including any areas damaged during construction activity.
24
25 (c) Owner shall add the appropriate approval block to the plat.
26
27 (d) Owner shall provide to the City of Alexandria details for the encroachment area,
28 including dimensions of the encroachment, prior to the mylar submission of the plat
29 as follows: the length and depth of the encroachment area along the public right-of-
30 way must be clearly depicted, and; the details shall include a tie distance from a lot
31 corner to the beginning of the encroachment.
32
33 (e) Owner shall contribute \$2,000 to the City of Alexandria for public improvements in
34 the vicinity of the Quaker Ridge development, including but not limited to tree
35 maintenance or pedestrian countdown signal upgrades.
36

37 Section 4. That by accepting the authorization hereby granted to establish and
38 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner
39 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any
40 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
41 establishment, construction, placement, existence, use or maintenance of the encroachment.
42

43 Section 5. That the authorization herein granted to establish and maintain the
44 encroachment shall be subject to Owner maintaining the area of the encroachment at all times

1 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
2 matter.

3
4 Section 6. That nothing in this ordinance is intended to constitute, or shall be
5 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
6 of its officers or employees.

7
8 Section 7. That the authorization herein granted to establish and maintain the
9 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
10 public right-of-way for any purpose whatsoever and, by written notification, demands from
11 Owner the removal of the encroachment. Said removal shall be completed by the date specified
12 in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be
13 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall
14 have the right to remove the encroachment, at the expense of Owner, and shall not be liable to
15 Owner for any loss or damage to the structure of the encroachment or personal property within
16 the encroachment area, caused by the removal.

17
18 Section 8. The terms "Owner" shall be deemed to include Duke Crossing, Inc. and
19 CarrHomes and their respective successors in interest.

20
21 Section 9. That this ordinance shall become effective upon the date and at the time
22 of its final passage.

23
24
25 WILLIAM D. EUILLE
26 Mayor

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29 Attachment: Encroachment plat

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31 Introduction: 09/08/09
32 First Reading: 09/08/09
33 Publication:
34 Public Hearing:
35 Second Reading:
36 Final Passage:



DUKE STREET
STATE ROUTE 236
VARIABLE WIDTH

QUAKER RIDGE

LOT 521

LOT 520

PARCEL "A"

WALL ENCROACHMENT AREA
(24' SQ. FT.)

GUILLOT
"A"

N13°16'09"E
6.56'

N77°26'44"W
24.18'

N77°01'56"W - 71.51'

S77°18'09"E - 96.33'

N77°18'14"W
0.71'

S12°41'51"W
6.83'

BEDAR J. SAMEE

PLAT
SHOWING A WALL ENCROACHMENT AREA
INTO THE RIGHT-OF-WAY OF
DUKE STREET
CITY OF ALEXANDRIA, VIRGINIA

SCALE: 1" = 20'

DATE: FEBRUARY 12, 2009

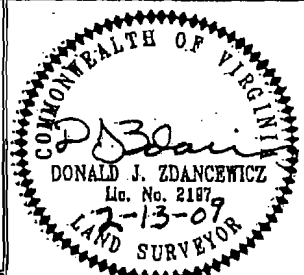
DWG: P:\2070 - Duke Street Commons\2070-01-002 (SUR)\Survey\Plats\2070-01-006-EP-ENCR.dwg

Bowman
CONSULTING

Bowman Consulting Group, Ltd.
14020 Thunderball Place, Suite 300
Chantilly, Virginia 20151

Phone: (703) 464-1000
Fax: (703) 481-9720
www.bowmanconsulting.com

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ORDINANCE NO. 4621

AN ORDINANCE authorizing the owner of the property located at 3500 Goddard Way to construct and maintain an encroachment for a portion of a stone retaining wall at that location.

WHEREAS, Duke Crossing, Inc., is the Owner (“Owner”) of the property located at 3500 Goddard Way, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a portion of a stone retaining wall which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 3500 Goddard Way, in the City of Alexandria, said encroachment consisting of a portion of a stone retaining wall along the Duke Street frontage of the Quaker Ridge development extending approximately 4 inches into the public right-of-way for a length of approximately 65 feet, as generally shown on the plat attached hereto, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owner of liability for any negligence on its part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owner maintaining, at all times and at its own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury:	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

This liability insurance policy shall identify the City of Alexandria and Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, Owner shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of Owner. Nothing in this section shall relieve Owner of its obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- (a) Neither the City of Alexandria nor any public or private utility company shall be responsible for damage to Owner's property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way of any public facilities or utilities in the area of encroachment.
- (b) Owner shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.
- (c) Owner shall add the appropriate approval block to the plat.
- (d) Owner shall provide to the City of Alexandria details for the encroachment area, including dimensions of the encroachment, prior to the mylar submission of the plat as follows: the length and depth of the encroachment area along the public right-of-way must be clearly depicted, and; the details shall include a tie distance from a lot corner to the beginning of the encroachment.
- (e) Owner shall contribute \$2,000 to the City of Alexandria for public improvements in the vicinity of the Quaker Ridge development, including but not limited to tree maintenance or pedestrian countdown signal upgrades.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner maintaining the area of the encroachment at all times

unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

Section 7. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 8. The terms "Owner" shall be deemed to include Duke Crossing, Inc. and CarrHomes and their respective successors in interest.

Section 9. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Attachment: Encroachment plat

Final Passage: September 12, 2009



DUKE STREET
STATE ROUTE 236
VARIABLE WIDTH

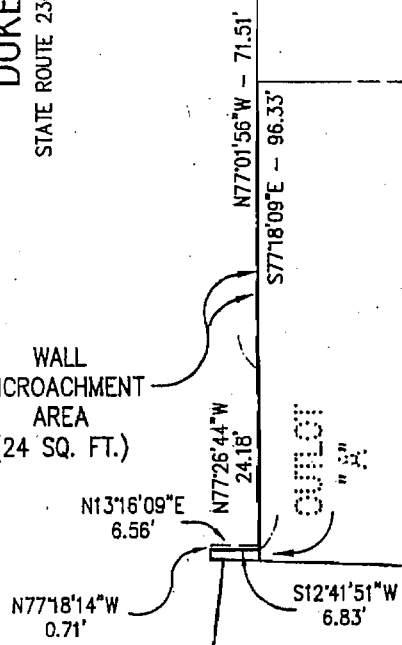
LOT 521
LOT 520

QUAKER RIDGE

WALL
ENCROACHMENT
AREA
(24 SQ. FT.)

PARCEL "A"

OUTLOT
"A"



DEDAR J. SAMEE

PLAT
 SHOWING A WALL ENCROACHMENT AREA
 INTO THE RIGHT-OF-WAY OF
DUKE STREET
 CITY OF ALEXANDRIA, VIRGINIA

SCALE: 1" = 20'

DATE: FEBRUARY 12, 2009

DWG: P:\2070 - Duke Street Commons\2070-01-002 (SUR)\Survey\Plats\2070-01-006-EP-ENCR.dwg

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CONSULTING

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